Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers;	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996;	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers Comments in support of the Further Notice of Proposed Rulemaking in the above-captioned proceedings.[1]

I. INTRODUCTION

Section 252(i) of the Communications Act of 1934, as amended (the "Act")[2] provides that local exchange carriers ("LECs") "shall make available any interconnection, service, or network element provided under an [approved interconnection agreement] . . . to any other requesting telecommunications carrier upon the same terms and conditions as those

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1 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147)*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-336 (rel. Aug. 21, 2003) ("Further Notice"); *Effective Date for New Rules and Comment and Reply Comment Dates Established for Triennial Review Order*, DA 03-2778, Public Notice (rel. Sept. 2, 2003). The Commission extended the comment period on September 26, 2003. *Wireline Competition Bureau Grants Request for Extension of Time for Filing Comments and Reply Comments on its Rules Implementing Section 252(i) of the Telecommunications Act of 1996 ("Pick-and-Choose Rules")*, DA 03-2979, Public Notice (rel. Sept. 26, 2003).

2 47 U.S.C. § 151 *et seq.*; *see also* 47 U.S.C. § 252(i).

provided in the agreement."[3] In the *Local Competition Order*, the Commission concluded that Section 252(i) supports a competitive carrier's ability to choose among individual provisions contained in approved interconnection agreements.[4] Under the Commission's so-called "pick and choose" rule, requesting carriers are permitted to opt into individual portions of different interconnection agreements without accepting all of the terms and conditions contained in any one of those agreements.

The Commission initiated a rulemaking on August 21, 2003, seeking comment on whether the Commission's current pick and choose rule should be eliminated and replaced by an alternative interpretation of Section 252(i).[5] Specifically, the Commission sought comment on the Commission's tentative conclusion that, after an incumbent LEC ("ILEC") obtains state commission approval for a statement of generally available terms and conditions ("SGAT"), or, in the case of non-BOCs, an SGAT-equivalent, competitive carriers could either elect the SGAT terms, negotiate a new agreement, or adopt another approved interconnection agreement in its entirety but would no longer be permitted to "pick and choose" parts of multiple agreements. CenturyTel supports the Commission's tentative conclusions, as described more fully below.

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3 47 U.S.C. § 252(i).

4 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 16137 ¶1310 (1996) ("*Local Competition Order*"), aff'd in part and vacated in part sub nom., *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), on remand, *Iowa Utils Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), rev'd in part, *Verizon Communications, Inc. v. FCC*, 525 U.S. 366 (2002).

5 Further Notice at ¶¶713-29.

II. DISCUSSION

A. The Commission should eliminate the current pick and choose rule.

Commercial agreements typically are the result of give and take by both parties to the negotiation. Before the negotiation takes place, each party privately decides what it hopes to gain from the negotiation and assesses what it is willing to give up in order to achieve its goals. Because costs and business plans differ among companies, each negotiation tends to be individualized.

The Commission's current pick and choose rule negates the individualized nature of interconnection negotiations. As some ILECs argued in 1996 when the Commission initially adopted its rules implementing Section 252(i),[6] the pick and choose rule unreasonably inhibits meaningful interconnection negotiations by discouraging the ILEC from offering agreements that address the individual needs of the entity with which it is negotiating. ILECs are reluctant to make significant concessions for fear that third party competitive LECs ("CLECs") will reap the benefits of the ILECs' concessions without the CLEC making any corresponding trade-offs. Accordingly, the pick and choose rule has the unintended consequence of inducing ILECs to negotiate one-size-fits-all interconnection agreements.[7] Even some carriers in the CLEC community share the ILECs' concern that the current pick and choose rule deters innovative negotiations, a result that runs counter to Congress' intent.[8]

Furthermore, as the obligations for unbundled network elements ("UNEs") begin to change under the *Triennial Review Order*, it will become even more important than ever that

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6 *See Local Competition Order*, 11 FCC Rcd at 16134-35, ¶1303.

7 *See* Further Notice at ¶722.

8 *See also Iowa Utils Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), rev'd in part, *Verizon Communications, Inc. v. FCC*, 525 U.S. 366 (2002).

carriers have the incentive to negotiate market terms for interconnection.[9] Because ILECs will no longer be required to unbundle some network elements, but nevertheless likely will have a number of incentives to do so on a voluntary basis, on market terms, the Commission must ensure that its rules allow carriers to negotiate individually-tailored interconnection arrangements.[10] By requiring carriers to adopt entire agreements, as opposed to the most favorable terms of those agreements, the Commission also will better ensure non-discriminatory treatment of carriers. In so doing, the Commission's proposed interpretation of Section 252(i) will induce meaningful negotiations and promote market innovation and competition in a way that the current pick and choose rule simply cannot and will not. For the reasons articulated above, the Commission should eliminate the current pick and choose rule.

B. <u>The Commission's proposed interpretation of Section 252(i) is reasonable.</u>

1. <u>The Commission's prior interpretation of Section 252(i) is not the only reasonable one.</u>

The Commission has the legal authority to reinterpret Section 252(i) in light of actual experience.[11] Federal case law clearly establishes that an agency may replace a previously affirmed reasonable interpretation of a statute with another reasonable interpretation of that statute.[12] In *Clinchfield*, the D.C. Circuit recognized that, unless Congress clearly states otherwise, under the *Chevron* doctrine, an agency is permitted "to select among reasonable

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9 Further Notice at ¶720.

10 For example, an ILEC no longer required to provide access to unbundled transport may still choose to negotiate such access with a CLEC who offers reciprocal access to transport on its own network -- something not all CLECs may offer.

11 Further Notice at ¶721.

12 *Clinchfield Coal Company v. Federal Mine Safety and Health Review Comm'n*, 895 F.2d 773 (D.C. Cir. 1990).

interpretations."[13] There is no indication that Congress intended the current interpretation to be the only reading of the statute. Thus, the Commission remains free to choose another interpretation so long as it, too, is a reasonable one. That the Commission may alter its interpretation of Section 252(i) is supported by the Supreme Court's statement that whether the current pick and choose rule impedes negotiations "is a matter eminently within the expertise of the Commission."[14]

Although the Supreme Court determined that the Commission's previous interpretation of Section 252(i) is the "most readily apparent" reading of the statute,[15] it did not state that that interpretation is the *only* reasonable reading of the language in Section 252(i). In fact, the Supreme Court noted that it seemed "eminently fair" to conclude that "[a] carrier who wants one term from an existing agreement . . . should be required to accept *all* the terms in the agreement."[16] Section 252(i) is reasonably susceptible to multiple interpretations, including the Commission's current proposal, which would promote the policy goals of encouraging ILECs to negotiate customized interconnection agreements.

The Commission's proposal is a reasonable alternative interpretation of Section 252(i), particularly in light of the evidence in the record that the current pick and choose rule unreasonably inhibits interconnection negotiations between ILECs and CLECs. Rather than encourage ILECs to negotiate one-size-fits-all agreements that fail to address any of the CLECs' individual needs, as the current pick and choose rule does, the Commission's proposal restores

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13 *Id.*

14 525 U.S. at 396.

15 *Id.*

16 *Id.*

the parties' incentive to engage in a give and take during the negotiations. Under the Commission's proposal, a CLEC would be able to interconnect with the ILEC under the standardized terms and conditions contained in the SGAT-equivalent, opt into an existing agreement in its entirety, or negotiate an individualized agreement that meets its particular needs. The proposed rule change thus gives CLECs considerable flexibility. But in addition, ILECs will have a much greater incentive to make concessions in individual negotiations, knowing that a third party CLEC will have to make the same tradeoffs as the original carrier in order to benefit from the ILEC's concessions.

2. Non-BOCs should be permitted to file a standard agreement as an SGAT-equivalent.

Having acknowledged the shortcomings of the current pick and choose rule,[17] the Commission proposes that each ILEC file and obtain state approval for an SGAT, and after the ILEC obtains state approval for the SGAT, carriers could elect the terms in the SGAT, negotiate a new agreement, or adopt another approved interconnection agreement in its entirety. Instead of requiring non-BOCs to file an SGAT, the Commission proposes that non-BOCs be allowed to file a standardized interconnection agreement, or an SGAT-equivalent, for state approval.[18]

CenturyTel supports the proposed rule change and agrees that Section 252(f) of the Act does not apply to non-BOCs.[19] CenturyTel therefore supports the Commission's proposal that the SGAT-equivalent for non-BOC ILECs should be a form agreement or standardized set of interconnection terms that any CLEC could elect. The SGAT-equivalent should be amendable upon appropriate notice to competitors in the same way that a tariff

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17 Further Notice at ¶¶722-24.

18 *Id.* at n.2151.

19 *Id.* at n.2149.

operates. The Commission also proposes, somewhat cryptically, that "the current pick and choose rule would apply solely to the SGAT."[20] CenturyTel supports a rule under which CLECs would be allowed to take terms from whatever options the SGAT-equivalent may contain; however, they should be required to take *all* terms related to the individual interconnection, service or element requested, pursuant to Section 252(i) of the Act. If the CLEC seeks a different set of terms, it may negotiate with the ILEC and pursue arbitration, if necessary, pursuant to Sections 252(a) and (b) of the Act.

3. <u>Existing non-discrimination requirements will ensure against the enforcement of "poison pills."</u>

If ILECs are not required to make individual interconnection provisions available on request, the Commission asks whether ILECs will insert in their agreements onerous terms that are innocuous to the original carriers in an effort to discourage subsequent carriers from opting into an agreement.[21] This fear is unfounded because the Commission's existing non-discrimination requirements would prevent unreasonable "poison pill" provisions from being enforced. Section 251(c)(2)(D) of the Act, for example, requires ILECs to provide interconnection with its network on terms and conditions that are nondiscriminatory.[22] Similarly, Section 251(c)(4) imposes on ILECs a duty not to impose discriminatory conditions on the resale of its telecommunications services,[23] and Section 251(c)(6) imposes a duty on ILECs to provide collocation on nondiscriminatory terms and conditions.[24] More generally, Section 202(a) prohibits unjust or unreasonable discrimination in charges or practices for like communication

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20 *Id.* at ¶725.

21 *Id.* at ¶723.

22 47 U.S.C. § 251(c)(2)(D).

23 47 U.S.C. § 251(c)(4).

24 47 U.S.C. § 251(c)(6).

service.[25] Accordingly, the Act already prevents the enforcement of unreasonably discriminatory interconnection provisions.

III. CONCLUSION

CenturyTel supports eliminating the current pick and choose rule and replacing it with the Commission's proposal to allow CLECs to elect the SGAT-equivalent's terms, negotiate a new agreement, or adopt another approved interconnection agreement in its entirety.

Respectfully submitted,

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25 47 U.S.C. § 202(a).